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TAGS: PGOV SOCI PINR SNAR ASEC KCOR CPAS PBTS JM XL
SUBJECT: JAMAICAN PARLIAMENT RETAINS DEATH PENALTY, NO
MOVEMENT ON BROADER CRIME BILLS

REF: KINGSTON 837

Classified By: DCM JAMES T. HEG FOR REASONS 1.4(b) and (d)

¶1. (C) Summary: In the lead up to a November 24 parliamentary vote in which legislators decided to retain the death penalty in Jamaica, there was strong public debate on the issue. Most Jamaicans, frustrated by the high crime level, support maintaining the death penalty. The discussion also raised questions about the United Kingdom (UK) Privy Council, which remains Jamaica's highest appellate court. Since the death penalty is outlawed in the UK while permissible in Jamaica, the Privy Council has ruled to limit its use. An opposition Senator believes the death penalty may be the wedge issue that allows Jamaica to permanently break with the Privy Council. While the issue has garnered a great deal of publicity, it is only peripheral to Jamaica's serious crime problem, which politicians have yet to address.

End summary.

Jamaican Parliament Upholds
Death Penalty

¶2. (U) In a November 24 vote, 34 out of 60 members of parliament (MPs) supported retention of the death penalty. Fifteen MPs opposed it, while 10, including opposition leader (and former Prime Minister) Portia Simpson-Miller, were absent from the proceedings. In the lead-up to the parliamentary vote, the media carried daily editorials and readers' responses on the topic. The vast majority of Jamaicans support the death penalty, and in the 2007 general election, the Jamaica Labor Party (JLP) campaigned as & tough on crime8 by pledging to uphold it.

¶3. (U) Many Jamaicans, frustrated by the level of crime, felt the death penalty should remain on the books, and perhaps be implemented with greater frequency. The state has not conducted an execution in the last two decades. Jamaica, with a population of just under three million, saw over 1,200 murders in 2008; by contrast, Chicago, with a similar-sized population, had around 440 murders in the same period. Despite general public support, human rights groups such as Amnesty International and the local NGO Jamaicans for Justice published calls to abolish the death penalty, citing studies that it does not act as a deterrent to crimes.

Nuances of UK Privy Council's Role
in Jamaican Legal System

¶4. (C) People's National Party (PNP) senator Basil Waite (please protect) gave poloff copies of briefing documents that legislators reviewed to prepare for the vote. Under current practice, the Judicial Committee of the United Kingdom (UK) Privy Council can make rulings on Jamaican constitutional law, and it remains the highest appellate court. This has given rise to some controversy on death

penalty issues. In a 1993 case, the Privy Council ruled that a delay of more than five years between a death penalty sentencing and the pursuant execution would constitute cruel and inhumane punishment. The ruling was predicated on the time necessary to lodge local appeals (two years) and also any appeals to the United Nations Human Rights Committee and the Inter-American Commission on Human Rights (3 years). With poor prison conditions, the Privy Council determined, holding a condemned person for longer than five years would be an &indefinite detention,⁸ violating the Jamaican law against inhumane punishment.

¶15. (C) That mandate is the primary reason there have been no executions in Jamaica since 1988. The justice system in Jamaica proceeds very slowly, and those convicted can make the appeals process last longer than five years, thereby having the original sentence commuted. Another Privy Council ruling in 2004 found unconstitutional a 1992 Jamaican law requiring mandatory death penalty sentencing in capital murder cases. As a result, prosecutors were able to exercise discretion in whether to seek the death penalty, and the accused were permitted to make a case for a lesser sentence.

¶16. (C) Many Jamaicans, including Waite and fellow PNP senator (and former Attorney General) AJ Nicholson, believe the Privy Council rulings are based on moral objections to the death penalty and statutes in the European Human Rights Act. In separate private conversations with poloff, Waite, who supports the death penalty, and Nicholson, who opposes it, both asserted that the Privy Council has sought to limit the death penalty in Jamaica through rulings that reduce Jamaican autonomy. The Council has not been able to overturn the death penalty outright based on the &Savings

Law Clause,⁸ which protects any law that remains the same in substance from prior to independence from the UK. In other words, pre-independence laws take precedence over the current Jamaican constitution; any laws changed after independence are subject to the Privy Council's review of whether it meets the current constitutional standard. Based on the Savings Law Clause, hanging remains the method of execution in death penalty cases in Jamaica because it was in place prior to independence.

PNP Opposition to Privy Council

¶17. (C) Nicholson told poloff that his party opposes the Privy Council's role in principle. He cited instances where other Caribbean countries had broken with the Council, including a 2002 decision by Barbados to reclaim its own courts as the highest appellate bodies. Belize currently has a bill before its parliament to authorize the transfer of all capital murder cases from the Privy Council to its own local high court. Regarding the death penalty, Nicholson added, the Privy Council has no case precedents since the punishment is outlawed in the UK. While Nicholson agrees with the morality behind the UK legal position, he strongly feels that Jamaicans should be able to determine their own laws without foreign interference.

¶18. (C) Waite believes the death penalty has such broad support in Jamaica that it may just be the wedge issue that enables the country to oust the Privy Council for good. &If we're going to see hanging returned to Jamaica, we're going to see a move away from the Privy Council as the highest court toward the Caribbean Court of Justice (instead,)⁸ he told poloff. According to Waite, 80 percent of Jamaicans favor the death penalty. This could garner the necessary two-thirds majority in both the House and Senate, as well as a majority in the national referendum, that would be required to make the Caribbean Court of Justice the highest appeals court.

Death Penalty Debate a Distraction?

¶19. (C) In June 2008, the governing JLP held talks with

opposition PNP on how best to combat crime. As a result, MPs introduced six crime bills in parliament, all of which have remained mired in committee. The PNP's Peter Phillips, who lost the September contest for presidency of the party (ref), was the lead negotiator at the discussions, held at Vale Royal. According to Waite, many in the party resented Phillips's making commitments without consulting with key PNP players. This is one reason he was not offered a position following Portia Simpson-Miller's election as party president, Waite posited. In Waite's view, now that Phillips no longer has &full standing,⁸ he is less influential in parliament.

¶10. (C) AJ Nicholson noted that most of the crime bills have a one year sunset clause attached, and he is willing to vote with the JLP to implement the measures. &The government should have the time and support it needs to get the crime situation under control,⁸ he said. He also stated that regardless of who made the commitments at Vale Royal, the party has an obligation to fulfill the terms of the deal. When asked whether the debate over the death penalty is diverting attention from the greater crime problem, Nicholson said, &The death penalty discussion is not a distraction. The question of whether it is carried out or not reflects the confidence the electorate has in the authorities to carry out the rule of law. The discussion speaks directly to public confidence.⁸

Comment and Analysis

¶11. (C) Support for the death penalty reflects public frustration with rampant crime and the perception of impunity, not faith in the State's ability to maintain the rule of law, Nicholson's assertion notwithstanding. Most observers believe the Jamaican populace would be best served if MPs acted to strengthen crime legislation and held prosecutors and police to account. Yet the crime bills that initially had bipartisan support continue to flounder in committee, where they have been largely defanged of real substance. NGO contacts report that they are testifying at committee hearings, but they have little hope of an imminent vote or implementation of recommended measures. In the meantime, the public continues to discuss the death penalty and the role of the Privy Council in Jamaica. The lack of any executions over the last twenty years and &foreign interference⁸ make for convenient scapegoats in the public eye, but addressing those tangential issues does little to alleviate the crime situation.

Johnson